

# Exhibit M

## Applicant's Financial Capability

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Nolin Hills Wind Power Project  
~~February~~ November 2020



d/b/a Nolin Hills Wind, LLC

Prepared by



Tetra Tech, Inc.

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## Acronyms and Abbreviations

Applicant	Nolin Hills Wind, LLC
EFSC	Energy Facility Siting Council
OAR	Oregon Administrative Rules
Project	Nolin Hills Wind Power Project

## 1.0 Introduction

Exhibit M provides information on Nolin Hills Wind, LLC's (the Applicant) financial capability, as required to meet the submittal requirements of Oregon Administrative Rule (OAR) 345-021-0010(1)(m) paragraphs (A) through (C). This includes the Retirement and Financial Assurance exhibit for the Energy Facility Siting Council (EFSC) to make the appropriate findings under OAR 345-022-0050(2):

### ***345-022-0050 Retirement and Financial Assurance***

*To issue a site certificate, the Council must find that:*

- 1. The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.*
- 2. The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.*

As discussed in Exhibit W, in the unlikely event that a permanent cessation of construction or operation of the Nolin Hills Wind Power Project (Project) occurs, the site can be restored to a useful, non-hazardous condition. However, in this exhibit the Applicant will establish that it has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to EFSC to restore the site to a useful, non-hazardous condition, as discussed below.

The requirements of OAR 345-021-0010(1)(m) paragraphs (A) through (C) are provided in Sections 2.0 through 4.0 of this exhibit.

## 2.0 Opinion of Legal Counsel – OAR 345-021-0010(1)(m)(A)

*OAR 345-021-0010(1)(m) Exhibit M. Information about the applicant's financial capability, providing evidence to support a finding by the Council as required by OAR 345-022-0050(2). Nothing in this subsection shall require the disclosure of information or records protected from public disclosure by any provision of state or federal law. The applicant must include:*

*OAR 345-021-0010(1)(m)(A) An opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements;*

Attachment M-1 is an opinion from the Applicant's legal counsel indicating that the Applicant has the legal authority to construct and operate the Project without violating its articles of incorporation or similar agreements.

### **3.0 Proposed Type and Amount of Financial Instrument – OAR 345-021-0010(1)(m)(B)**

*OAR 345-021-0010(1)(m)(B) The type and amount of the applicant's proposed bond or letter of credit to meet the requirements of OAR 345-022-0050;*

Prior to beginning construction on the Project, the Applicant will submit a bond, bonds, or letter(s) of credit to the State of Oregon in an amount equal to the net costs of Project retirement as detailed in Exhibit W. The bond(s) or letter(s) of credit will be provided in a form approved by EFSC and will ensure that adequate funds exist for the retirement of the Project and for restoration of the Project site to a useful, non-hazardous condition. The bond(s) or letter(s) of credit will be adjusted annually for inflation according to the Gross Domestic Product Implicit Price Deflator Index.

### **4.0 Evidence of Reasonable Likelihood of Obtaining Security – OAR 345-021-0010(1)(m)(C)**

*OAR 345-021-0010(1)(m)(C) Evidence that the applicant has a reasonable likelihood of obtaining the proposed bond or letter of credit in the amount proposed in paragraph (B), before beginning construction of the facility.*

The Applicant has obtained a letter from Royal Bank of Canada (Attachment M-2) demonstrating that it has a reasonable likelihood to obtain one or more bonds in an amount equal to or greater than the cost of Project retirement and restoration, as detailed in Exhibit W.

### **5.0 Conclusion**

The evidence provided in this exhibit demonstrates that the Applicant has a reasonable likelihood of obtaining a bond or letter of credit in an amount sufficient to restore the site to a useful, non-hazardous condition as detailed in OAR 345-022-0050(2).

# **Attachment M-1. Opinion of Legal Counsel**

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October 13, 2020

Oregon Department of Energy  
550 Capitol St. NE, 1<sup>st</sup> Floor  
Salem, Oregon 97301

Subject: In the Matter of the Application for a Site Certificate for the Nolin Hills Wind Project

Dear Sir or Madam:

I am an attorney for Capital Power Corporation, a Canadian corporation, and its wholly owned subsidiary and affiliate, Nolin Hills Wind, LLC (the "Applicant"). I have examined originals or certified copies of the books and records of Applicant and such other documents, limited liability company records, certificates of public officials, and instruments regarding the Applicant as I have deemed necessary and appropriate for the purposes of this opinion letter.

In rendering the opinion expressed below, I have assumed (i) the authenticity of all the documents submitted to me as originals and (ii) the conformity to original documents of all documents submitted to me as copies. As to factual matters, I have relied to the extent deemed proper upon statements and certifications of officers and managers of the Applicant.

Based on the foregoing, to the best of my knowledge, I am of the opinion that, subject to the Applicant's meeting of all applicable federal, state and local laws (including all rules and regulations promulgated thereunder), the Applicant has the legal authority to construct and operate the up to 600 MW nameplate capacity wind and solar generation facility and associated facilities located in Umatilla County, Oregon (the "Project") without violating its articles of organization, covenants, or similar agreements.

The foregoing opinion is limited solely to whether the Applicant has the authority under its operating agreements to construct, own, and operate the Project. I express no opinion as to the applicability of any federal, state, or local laws (including all Oregon laws and any rules and regulations promulgated thereunder) to such construction and operation or as to the effects of the foregoing laws on such construction and operation.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Hall". The signature is written in a cursive, flowing style.

Michael Hall, Senior Legal Counsel  
Capital Power Corporation

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## **Attachment M-2. Letter from Bank**

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RBC Royal Bank®

Royal Bank of Canada  
Corporate Banking  
3900 Bankers Hall West  
888 – 3<sup>rd</sup> Street S.W.  
Calgary, Alberta T2P 5C5  
Tel: 403-299-8428

Bryn Davies  
Authorized Signatory

October 14, 2020

Oregon Department of Energy  
625 Marion Street NE  
Salem, Oregon 97301-3737

Attention: Todd R. Cornett, Assistant Director, Siting Division

Dear Mr. Cornett:

Capital Power US Holdings Inc. ("CPUSHI") is a valued client of Royal Bank of Canada ("RBC").

It is our understanding that CPUSHI (as parent of the Applicant, Nolin Hills Wind LLC) may be asked to provide a letter of credit and that the potential liability of the letter of credit could total an amount of up to thirty-two million dollars (\$32,000,000.00). RBC has an ongoing relationship with CPUSHI which includes providing credit facilities and from time to time, issuing letters of credit. As of today, CPUSHI has sufficient capacity on its credit facility to issue the letter of credit. Provided there is sufficient credit facility availability at the time, there is a reasonable likelihood that RBC would provide the letter of credit should it be required, subject to our regular review and acceptance of the terms and conditions of the final contract and required letter of credit.

Any arrangement for the final letter of credit is a matter between CPUSHI and RBC and we assume no liability to third parties or to you if, for any reason, we do not execute said letter of credit.

If you have any questions, please do not hesitate to call me at (403) 299-8428.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Bryn Davies', with a large, stylized flourish extending from the end of the signature.

Bryn Davies  
Authorized Signatory

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